(16) 270

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 311

SEABOARD RICE MILLING COMPANY, PLAINTIFF IN ERROR,

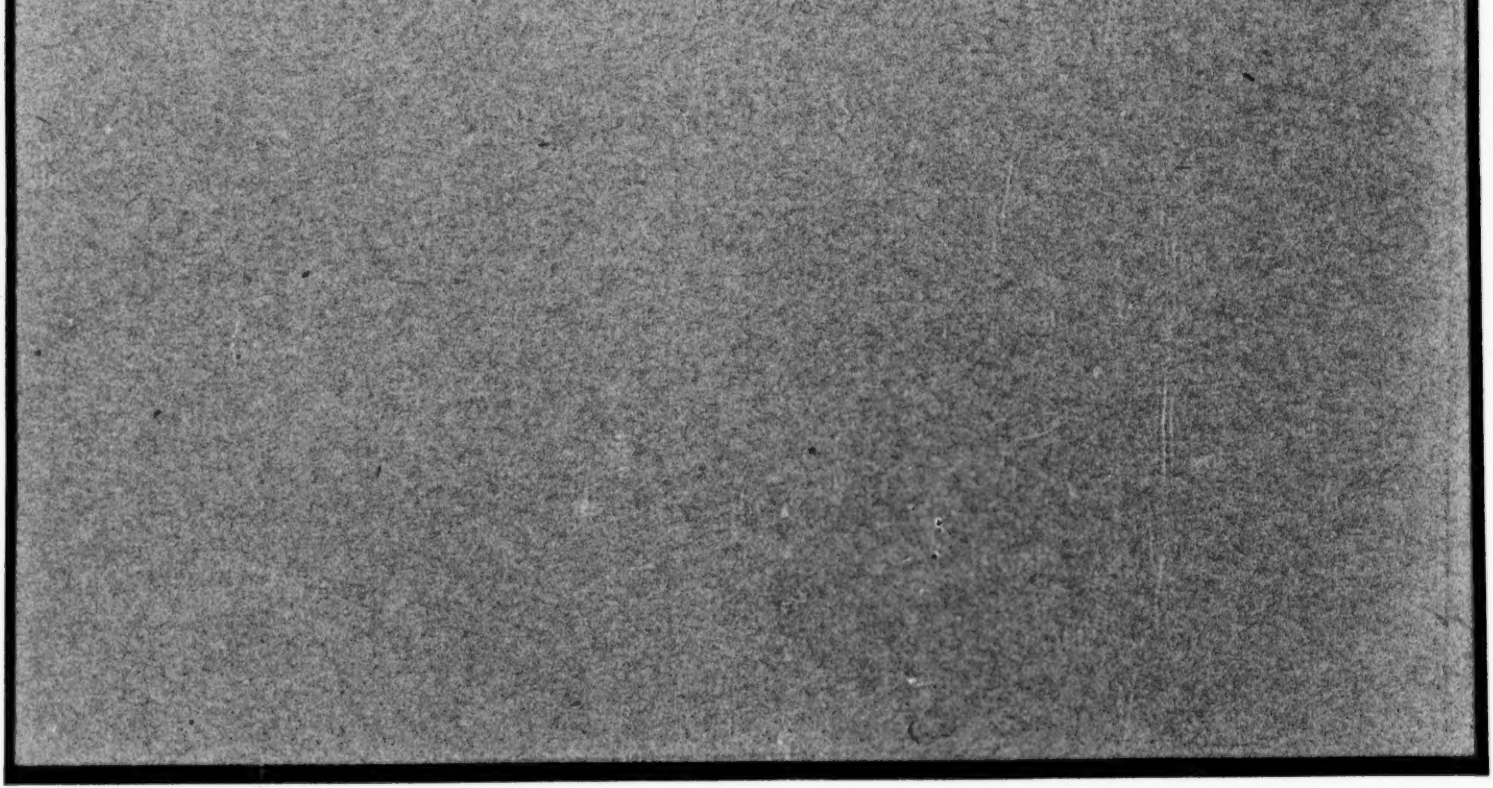
vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

FILED MARCH 14, 1925

(30,946)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 15, 1925

[fol. 1] CITATION—In usual form; filed Feb. 16, 1925; omitted in printing

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[fol. 2] **IN UNITED STATES DISTRICT COURT**

WRIT OF ERROR AND RETURN—Filed Feb. 16, 1925

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the September Term, 1924, thereof, between Seaboard Rice Milling Company, Plaintiff, and Chicago, Rock Island & Pacific Railway Company, Defendant, a manifest error hath happened, to the great damage of the said Seaboard Rice Milling Company, Plaintiff, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid, at the City of Washington, and filed in the office of the Clerk of the Supreme Court of the United States, on or before the — day of March, 1925, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable C. B. Faris, Judge of the District Courts of the United States within and for the Eastern District of Missouri, this 16th day of February, in the year of our Lord one thousand nine hundred and twenty-five.

Issued at office in the City of St. Louis, with the seal of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, dated as aforesaid.

Jas. J. O'Connor, Clerk District Court United States, Eastern Division of the Eastern Judicial District of Missouri, by Joseph M. Walsh, Deputy. (Seal of the United States District Court, Missouri.)

Allowed by C. B. Faris, Judge.

[fol. 3] Return to Writ

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of said District Court, at office in the City of St. Louis, Mo., this 3rd day of March, A. D. 1925.

Jas. J. O'Connor, Clerk of said Court. (Seal of the United States District Court, Missouri.)

[File endorsement omitted.]

[fol. 4] [Caption omitted]

IN UNITED STATES DISTRICT COURT

Docket No. 6814. At Law.

SEABOARD RICE MILLING COMPANY, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Defendant

PETITION—Filed Aug. 22, 1924

The plaintiff, by Alfred G. Hagerty, its Attorney, complains of the defendant, and alleges upon information and belief, as follows, to-wit:

For First Cause of Action

1. The plaintiff, at all times herein mentioned, and now is, a Corporation organized and existing under the laws of the State of Texas, engaged in buying, selling and trading in rice and rice products, with its principal place of business in Galveston, Texas.

2. The defendant, at all times herein mentioned, and now, is a Corporation organized and existing under the laws of the States of Illinois and Iowa, with an office for the transaction of business at — Olive Street, in the City of St. Louis, Mo., and was, throughout the stated period of time and now is a common carrier for hire engaged in the transportation of freight in interstate commerce, between

points in the State of Arkansaw and other states, on the one hand, and points in other states, including the State of New York, on the other hand, both by rail and by water, under joint arrangements and [fol. 5[connections with other transportation systems within the continental boundaries of the United States.

3. On or about March 2nd, 1920, a shipment of clean rice, in good condition, contained in bags, weighing 87,707 pounds, and consisting of 555 pockets in Lot No. 68, and 325 pockets in Lot No. 114, was delivered to the defendant at its freight station in Carlisle, Ark. for transportation by its through rail and water route from Carlisle, Ark. to New York, N. Y. through the port of Norfolk, Va.; said shipment having been loaded into and delivered to the defendant in a freight car bearing the initials "C. B. & Q., and No. 132144."

4. The defendant accepted the aforesaid shipment and issued a bill of lading therefor, and agreed to cause the said shipment to be transported by, through rail and water route from Carlisle, Ark. to New York, N. Y., and there, upon surrender of the said bill of lading, properly endorsed, to cause said shipment to be delivered to the owner or consignee thereof, and to be delivered in the same condition as received by the defendant, and within the time reasonably required for such transportation and delivery.

5. The consignor of the aforesaid shipment was Bertaut & Company, Carlisle, Ark., and the plaintiff purchased from the consignor the rices contained in the aforesaid shipment, and became the owner thereof, and the said bill of lading, properly endorsed, was delivered to the plaintiff.

6. A reasonable time for the transportation and delivery of the said shipment was thirty (30) days, and such time expired April 2nd, 1920.

7. The said shipment was not delivered to plaintiff at destination on or before April 2nd, 1920, but through wanton and wil-full negligence upon the part of defendant and its connecting transportation systems, was delayed in transportation, and finally was delivered to plaintiff at New York City on July 8th, 1920, in a physically damaged condition; the rices contained in said shipment having then been discolored and mildewed.

[fol. 6] 8. The market value of said shipment in its said damaged condition at New York, N. Y. on April 2nd, 1920, was $7,897.92; the market value of said shipment in good condition at New York, N. Y. on April 2nd, 1920, was $10,933.65, and by reason of the failure of the defendant to perform its bill of lading contract as aforesaid, the plaintiff has sustained damages in the sum of $3,035.73, with interest on $10,482.05 from April 2nd, 1920, to July 8th, 1920, and interest on $3,035.73 from July 8th, 1920.

For a Second Cause of Action

9. The plaintiff repeats and re-alleges each and every allegation contained in paragraphs one and two of this complaint, with the same force and effect as if the same were set forth in full in this cause of action.

10. On or about March 2nd, 1920, at Carlisle, Ark., a shipment of 573 pockets of clean rice, in good condition, contained in bags, Lots Nos. 114 and 76, weighing 57,123 pounds, was delivered to the defendant at its freight station for transportation by, through rail and water route from Carlisle, Ark. to New York, N. Y. via Norfolk, Va. Said shipment having been delivered to defendant by Bertaut & Company, consignor, to the defendant in a freight car bearing the initial, G. E. T. 4361.

11. The defendant accepted the said shipment and issued a bill of lading therefor, and agreed to cause the said shipment to be transported by, through rail and water route, from Carlisle, Ark. to New York, N. Y., and there, upon surrender of the said bill of lading, properly endorsed, to cause the said shipment to be delivered to the owner, or consignee thereof, and to be delivered in the same condition as received by the defendant and within the time reasonably required for such transportation and delivery. The plaintiff purchased the said shipment and became the owner thereof, and the said bill of lading properly endorsed was delivered to the plaintiff.

[fol. 7] 12. A reasonable time for the transportation and delivery of the said shipment was thirty days, and such time expired April 2nd, 1920.

13. That said shipment was not delivered on or before April 2nd, 1920, but through wanton and wil-ful/ negligence on the part of the defendant and its connecting transportation systems was delayed in transportation, and finally was delivered to plaintiff at New York, N. Y. July 8th, 1920, in a damaged condition. The rices contained in said shipment having been mildewed and discolored.

14. The market value of the said shipment in its said damaged condition at New York, N. Y. on July 8, 1920, was $4,699.90; the market value of the said shipment in good condition at New York on April 2nd, 1920, was $7,127.74, and by reason of the failure of the defendant to perform its transportation contract as aforesaid, the plaintiff has sustained damages in the sum of $2,427.84, with interest on $6,837.27 from April 1st, 1920, to July 8th, 1920, and interest on $2,427.84 from July 8th, 1920.

Wherefore, the plaintiff demands judgment in the sum of $5,463.57 with interest on $17,319.32 from April 2nd, 1920, to July 8th, 1920, and on $5,463.57 from July 8th, 1920, together with costs.

Respectfully submitted, Afred G. Hagerty, Attorney for Plaintiff. (Signed) Arthur E. Haid, of Counsel.

[fol. 8] IN UNITED STATES DISTRICT COURT

PLEA TO JURISDICTION—Filed September 9, 1924

Now comes the defendant, The Chicago, Rock Island & Pacific Railway Company, and, appearing herein specially and for this purpose only, and without conferring, or intending to confer, jurisdiction of this Court over its person, says that at the time of the commencement of this action, and now, it was and is a corporation organized under the laws of the States of Illinois and Iowa, with its principal office and place of business in the City of Chicago, State of Illinois; that it was not, and is not now, an inhabitant of this district, and that the plaintiff was not, at the time of the commencement of this action, and is not now, a resident or inhabitant of the district in which this action was instituted.

Wherefore, defendant, insisting upon its exemption from suit in this district, prays that this action be dismissed

(Signed) James C. Jones, Jr., Jones, Hocker, Sullivan & Angert, Attorneys for Defendant.

Sworn to by James C. Jones, Jr. Jurat omitted in printing.

[fol. 9] IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING PLEA TO JURISDICTION AND DISMISSING CAUSE—Nov. 18, 1924

Now on this day the Court having considered the plea of defendant to the jurisdiction of the Court in this cause, being fully advised in the premises, doth order that said plea to the jurisdiction be, and the same is hereby sustained, and that this cause be and the same is hereby dismissed for want of jurisdiction without prejudice at the costs of plaintiff.

[fol. 9a] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME—Feb. 14, 1925

Now on this day upon application of plaintiff it is ordered that it be, and is hereby, granted to and including March 1st, 1925 within which to file its bill of exceptions.

It is further ordered that the amount of bond for costs to be given by said plaintiff on the proposed writ of error to be prosecuted by it to the Supreme Court of the United States be fixed at the sum of Five Hundred Dollars ($500.00), and plaintiff be granted to and including March 1st, 1925 within which to file such bond.

[fol. 9b] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING WRIT OF ERROR—Feb. 16, 1925

Now on this day comes plaintiff in the above entitled cause and files herein its petition praying for the allowance of a writ of error to the Supreme Court of the United States, together with its assignment of errors on such proposed writ of error; upon consideration whereof it is ordered that a writ of error be allowed plaintiff as prayed to the Supreme Court of the United States upon its giving bond for costs, conditioned as required by law, in the sum of Five Hundred Dollars ($500.00). And now plaintiff presents such bond for costs in the sum of Five Hundred Dollars ($500.00), which bond is duly approved and filed, and a citation issued to defendant, citing and admonishing it to be and appear in said Supreme Court of the United States within thirty (30) days from and after this date.

And now the parties hereto file herein their stipulation as to the transcript of record on such writ of error, defendant, in such stipulation, waiving service of citation upon it, and enters its appearance on such writ of error in the Supreme Court of the United States.

And now plaintiff files herein a certificate executed by Honorable Charles B. Davis, United States District Judge for this Division and District, as to the jurisdictional question involved in and passed upon in this cause.

[fol. 10] IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR—Filed February 16, 1925

Now comes the Plaintiff herein, Seaboard Rice Milling Company, and states that on the 18th day of November, 1924, this court entered judgment herein in favor of Defendant and against Plaintiff, in which judgment and the proceedings had prior thereto in this cause this court adjudged that this court had not jurisdiction to entertain this cause, between Plaintiff, a corporation of the State of Texas, and Defendant, a corporation of the States of Illinois and Iowa, but doing business in the State of Missouri and in the Eastern District of said state, said cause involving alleged damage to two shipments of freight moving in interstate commerce; this court, by said judgment, dismissing said cause for want of jurisdiction; that this court erred in so holding, which error and certain erors which will appear more in detail from the assignment of errors which is filed with this petition, were committed to the prejudice of Plaintiff, and feeling aggrieved by said judgment, the Plaintiff, Seaboard Rice Milling Company, hereby prays for a writ of error from the said decision and judgment to the Supreme Court of the United States upon the grounds and for the reasons set forth in the assignment of errors filed herewith, and it prays that its writ of error be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which

said judgment and finding was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of such court, in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of it be made.

(Signed) Alfred G. Hagerty & Arthur E. Haid, Attorneys for Plaintiff.

[fol. 11] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed February 16, 1925

Now comes Plaintiff in the above enttiled cause and files the following assignment of errors upon which it will rely in its prosecution of the appeal from the order made and entered in the above entitled cause by this honorable Court on the 18th day of November, A. D. 1924, the said order, by its terms and operation, having dismissed the cause for want of jurisdiction:

I

That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in sustaining the plea of defendant to the jurisdiction of said court, and in dismissing the cause "for want of jurisdiction without prejudice at the costs of Plaintiff," in the following particulars, to-wit:

1. In failing to find that the cause of action arose under a law of the United States within the meaning of Section 24, Division 8, of the Judicial Code, and that jurisdiction in such cases is not dependent upon diverse citizenship;

2. In finding that in this cause suit could be brought, within the meaning of Section 51 of the Judicial Code, only in the District whereof Defendant is an inhabitant, and in failing to find that the jurisdiction thus conferred is not dependent upon either (a) the residence of the Plaintiff; (b) the place where the cause of action accrued, or (c) the right of Plaintiff to sue in a State Court whereof the Defendant is an inhabitant;

3. In failing to find, (a) as the record shows, that Defendant is engaged as a common carrier for hire within the State of Missouri under the Statutory regulation of that State; (b) maintains and operates its system of transportation by rail within that State in the carriage of persons and property; (c) owns property in the State of Missouri, and pays taxes to that State; (d) is authorized to operate its railroad within said State under the laws of the State, and may therein sue or be sued; (e) Maintains a general agent in the State of Missouri with office in the City of St. Louis, and is authorized to negotiate contracts for transportation, settle claims for loss and damage to property in transit, and generally represent Defendant;

[fol. 12] 4. In failing to conclude, from the aforesaid facts, that said Defendant is engaged in business within the said State, and therefore an inhabitant of that State within the meaning of Section 51 of the Judicial Code.

5. In failing to find that Defendant was within the jurisdiction of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Wherefore, Plaintiff prays that the aforesaid order entered on the 18th day of November, A. D. 1924, by the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, be reversed and the cause remanded to the said Court with instructions that Defendant is lawfully within its jurisdiction and the cause should proceed to trial upon its merits.

(Signed) Alfred G. Hagerty & Arthur E. Haid, Attorneys for Plaintiff.

[fols. 13 & 14] Bond on Writ of Error for $500—Approved and filed Feb. 16, 1925; omitted in printing

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[fol. 15] In United States District Court

[Title omitted]

Certificate of Question of Jurisdiction—Filed Feb. 16, 1925

In this cause it is hereby certified that the jurisdiction of this court as a Federal Court is in issue, and that in sustaining the plea to the jurisdiction of this court and entering an Order of Dismissal, it was decided and adjudged that this court had not jurisdiction to entertain a cause under the Judicial Code between two parties, neither of them was a citizen of the State of Missouri, and this court dismissed said cause for want of jurisdiction without prejudice at the cost of the Plaintiff. It is further certified that said question of jurisdiction was decided upon the record and testimony adduced at presentation of said plea to the jurisdiction.

Wherefore, said question of jurisdiction alone is hereby certified to the Supreme Court of the United States for decision, pursuant to the provisions of the Judicial Code.

Signed, sealed and made a part of the record this 14th day of February, 1925, in the September Term, 1924, of this court.

Charles B. Davis, District Judge Holding the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

[fol. 15½] [File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed February 16, 1925

It is hereby stipulated and agreed by and between the parties to this cause that the clerk shall prepare and certify a transcript of the record in the above-entitled cause to be filed in the office of the clerk of the Supreme Court of the United States under the writ of error perfected to said court, and include in said transcript the following pleadings, proceedings and papers on file herein, to-wit:

The Petition; Defendant's Plea to the Jurisdiction; the Record Entry showing the Judgment and Decree entered on the 18th day of November, 1924, sustaining said plea to the jurisdiction and dismissing said cause; the Petition for Writ of Error; the Citation; Assignment of Errors; Bond on Writ of Error; the Bill of Exceptions; the Certificate of Question of Jurisdiction; and this stipulation; and that the same shall constitute the transcript of record on writ of error.

The Chicago, Rock Island & Pacific Railway Company hereby waives service of citation on writ of error herein and enters its appearance in the Supreme Court of the United States through its attorneys.

(Signed) Alfred G. Hagerty & Arthur E. Haid, Attorneys for Plaintiff. Jones, Hocker, Sullivan & Angert, Attorneys for Defendant.

[fol. 16a & 16b] IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME—Feb. 28, 1925

Now on this day upon application of plaintiff it is ordered that it be and is hereby granted to and including March 7th, 1925, within which to file its bill of exceptions.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions—Filed March 2, 1925

CAPTION

Be it remembered: That upon the hearing of the defendant's plea to jurisdiction during the September Term, A. D. 1924, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, upon the 3d day of November, A. D. 1924, before Honorable Charles B. Davis, the following proceedings were had:

APPEARANCES OF COUNSEL

For Plaintiff: Alfred G. Hagerty, Esq.
For Defendant: Messrs. Jones, Hocker, Sullivan and Angert (by Vincent L. Boisaubin).

[fol. 18] Thereupon the plaintiff, to sustain the issues in its behalf, offered and introduced the following testimony:

ALECK D. AIKEN, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiff as follows:

Direct examination.

Questions by Mr. Hagerty:

Q. Mr. Aiken, will you please state your official capacity with the Rock Island Company—Chicago, Rock Island and Pacific Railroad Company?
A. Assistant General Freight Agent, Rock Island Railway.
Q. You maintain your office here in St. Louis?
A. I do.
Q. Is the railroad of the Chicago, Rock Island and Pacific Railway Company operated in the State of Missouri?
A. It is.
Q. Do you own railroad property here?
A. We do.
Q. Cars? Rails?
A. Yes, sir.
Q. Sell passengers tickets?
A. Yes, sir.
Q. To points within the State?
A. Yes.
[fol. 19] Q. Engage in contracts for transporting of freight, both interstate and State?
A. Yes, sir.
Q. Do you undertake to adjust claims here in the State for loss and damage, if the movement occurred intra-state?
A. Yes, sir.
Q. Do you pay taxes to the State on property within the State?
A. I presume they do.
Q. Are you licensed as a foreign corporation within the State, under Missouri laws?
A. I presume we are.

Mr. Boisaubin:

Q. Well, do you know of your own knowledge, Mr. Aiken, whether you are or not?
A. No, I do not.

Mr. Hagerty: Do you want to admit that?
Mr. Boisaubin: I don't know whether they are or not.
Mr. Hagerty: I think that is all.

Cross-examination.

Questions by Mr. Boisaubin:

Q. What is the character of the business that you transact here?
A. Sell tickets; sell transportation; issue bills of lading expense bills.
Q. You have a branch line running from Kansas City to St. Louis, haven't you?
[fol. 20] A. Yes, sir.
Q. Where is the main line of this railroad?
A. The main line of this railroad is from Chicago to Denver.
Q. Where is the principal office of the railroad?
A. Chicago, Illinois.
Q. And where do the executive officers of the company live?
A. Chicago and New York.
Q. Where do you make your reports, your financial reports and your business reports—to what office?
A. To Chicago.
Q. You make those periodically, do you?
A. Yes, sir.
Q. The funds of the company are all submitted to Chicago?
A. Yes, sir.
Q. You conduct merely a branch office in St. Louis?
A. Yes, sir.
Q. None of the stockholders' or directors' meetings are held here, are they?
A. They are not.

Redirect examination.

Questions by Mr. Hagerty:

Q. The company is engaged as a common carrier for hire within the State of Missouri that is, I understood from your testimony you [fol. 21] admit that the Railway Company transports passengers and transports freight within the State of Missouri?
A. Yes, sir.
Q. And in this district, between St. Louis and Kansas City?
A. Yes, sir.
Q. And maintains an office here, and maintains an office by which claims for loss and damage to freight may be adjusted?
A. Well, the claims are not adjusted here. The office of the Freight Claim Agent is in Chicago, but I act as—recommend the basis of settlement at times when I am called on. I do not pass on them finally.
Q. Well, are you from time to time, in connection with such

claims that may be presented against the company, authorized by your general office to negotiate with the claimants here in St. Louis or elsewhere, in reference to the adjustment?

A. My position is more of in recommending a basis of settlement. I can settle any claim under fifty dollars; but anything over that, I haven't any authority or jurisdiction whatever.

Q. Do you sometimes decline payment of claims, if you are instructed to do so through the general office?

A. I would not decline them direct; no, sir.

Q. You would not. You testified, I believe, that the Chicago, Rock Island and Pacific Railway Company had a branch line from Kansas [fol. 22] City to St. Louis. Is that not a main line over which passengers travel?

A. I think it was built as the old St. Louis, Kansas City and Colorado line, and was afterwards taken over by the Rock Island.

Q. Well, for purposes of transportation, between St. Louis and Kansas City, is that not used as a main line?

A. I would say it was a main line.

Q. It is a main line?

A. Formed a through route.

The Court: Is that all, gentlemen?

Mr. Hagerty: That is all.

Which was all of the evidence offered at the hearing.

Thereupon arguments were made to the Court by counsel for both the parties, after which the question was taken by the Court as submitted.

And thereafter, to-wit, on the 18th of November, A. D. 1924, the plea to jurisdiction was sustained and the cause dismissed by the Court, without prejudice.

To which ruling and action of the Court, plaintiff by its counsel then and there at the time duly excepted.

[fol. 23] ORDER SETTLING BILL OF EXCEPTIONS

Forasmuch, as said matters do not appear of record herein, the plaintiff has prepared and now presents this, its bill of exceptions, and prays that the same may be signed, sealed, and made a part of the record, which is accordingly done on this 2nd day of March, A. D. 1925.

(Sgd.) Charles B. Davis, Judge Eastern Division of the Eastern Judicial District of Missouri. (Seal.)

The foregoing bill of exceptions has been examined and is hereby approved and agreed to by—

(Sgd.) Alfred G. Hagerty & Arthur E. Haid, Attorneys for Plaintiff. (Sgd.) Jones, Hocker, Sullivan & Angert, Attorneys for Defendant.

[fol. 24] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Jas. J. O'Connor, Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify, that the foregoing is a full, true and complete transcript of the record and proceedings in Cause No. 6814, At Law, wherein Seaboard Rice Milling Company is plaintiff, and Chicago, Rock Island & Pacific Railway Company is defendant, (except insofar as the same is restricted by the Præcipe for Transcript of the Record heretofore set out) as fully as the same remains on file and of record in my office, and that the original Citation and Writ of Error are hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court at office in the City of St. Louis, in the Eastern Division of said District, this 3rd day of March, in the year of our Lord nineteen hundred and twenty-five.

Jas. J. O'Connor, Clerk of said Court, by Joseph M. Walsh, Deputy Clerk. (Seal of the United States District Court, Missouri.)

Endorsed on cover: File No. 30,946. E. Missouri D. C. U. S. Term No. 311. Seaboard Rice Milling Company, plaintiff in error, vs. Chicago, Rock Island & Pacific Railway Company. Filed March 14th, 1925. File No. 30,946.

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WM. R. STANSB
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 311, File No. 30,946.

SEABOARD RICE MILLING COMPANY,
Plaintiff in Error,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

ALFRED G. HAGERTY,
Attorney for Plaintiff in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 311, File No. 30,946.

SEABOARD RICE MILLING COMPANY,
Plaintiff in Error,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE—TITLE I.

Plaintiff in error—a corporation organized and existing under the laws of the state of Texas, engaged in buying, selling and trading in rice and rice products, with its principal place of business in Galveston, Texas,—on August 22, 1924, brought suit in the District Court of the United States for the Eastern District of Missouri, alleging that it sustained damages in the amount of Five Thousand Four Hundred Sixty Three ($5,463.57) Dollars and Fifty-seven Cents, through the wanton and wilful negligence of the defendant in error and its connecting transportation systems, in the interstate transportation of two consignments of rice, carload lots, shipped from Carlisle, Arkansas, to New York, N. Y. in March, 1920 (R. 2, 3, 4).

The defendant in error pleaded to the jurisdiction upon the ground that neither it nor the plaintiff were inhabitants of the state of Missouri—the district in which the suit was brought—insisting upon its exemption from suit in said district upon a showing that it was a corporation organized and existing under the laws of the states of Iowa and Illinois, with its principal place of business in Chicago, Illinois (R. 5).

The plea was sustained and the cause dismissed "for want of jurisdiction without prejudice at the costs of plaintiff" (R. 5). A writ of error was allowed (R. 6) and the question of jurisdiction, alone, is brought here for determination over a certificate of the court below (R. 8), which shows, *per se*, that the plea was sustained because neither of the parties "was a resident of the state of Missouri."

THE RIGHT OF ACTION AND ITS CHARACTER.

TITLE II.

The petition, as before stated, alleges damage to property, in course of its interstate transportation, through the negligence of the defendant carrier and its connecting transportation systems. The right of action is therefore statutory, since it is given, within the meaning of sub-division 8 of section 24 of the Judicial Code, by a Federal law which provides for "regulating commerce," more particularly described in the margin.[1] The character of the action obviously is personal and transitory.

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[1]Carmack amendment of June 29, 1906, 34 Stat. L. 584, to the Interstate Commerce Act of February 4, 1887, 24 Stat. L. 379, as amended; and Cummins amendment (as amended) to the same act, 38 Stat. L. 1197, more particularly identified as paragraphs 11 and 12 of section 20 of the Interstate Commerce Act; and Galveston H. & S. A. R. Co. vs. Wallace, 223 U. S. 481; Louisville & Nashville R. R. Co. vs. Rice, 247 U. S. 201; Lucking v. Detroit & Cleveland Nav. Co., 265 U. S. 346; Barrett vs. Van Pelt, 45 S. C. R. 437, No. 160, Oct. 1924 Term, Adv. Op. No. 465.

JURISDICTION AND VENUE—TITLE III.

Original jurisdiction of such actions is vested in the District Courts of the United States by sub-division 8, section 24, of the Judicial Code. That jurisdiction, however, is not exclusive since it is vested concurrently in the courts of the several states.[2] But the concurrent jurisdiction in the courts of the several states may be defeated by defendants under the *removal* and *venue* privileges allowed them in sections 28 and 51, respectively, of the Judicial Code, upon either of the following grounds, viz:

(a) Where a suit of a civil nature, such as here, arises under a law of the United States, and[3]

(b) Any other suit of a civil nature where the defendant or defendants are non-residents of the State in which the suit is brought.

The question of removal, however, does not enter here, because the suit was commneced by original process issuing directly from, and returned to, the District Court of the United States for the Eastern District of Missouri, thus giving that court at once jurisdiction over both the cause of action

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[2]Galveston H. & S. A. R. Co. vs. Wallace, 223 U. S. 481, 490; State of Missouri ex rel. The St. Louis, Brownsville & Mexico Railway Company vs. William A. Taylor, Judge, Circuit Court of the City of St. Louis, No. 89, October Term, 1924; 45 S. C. R. 47.

[3]Except that since January 21, 1914 (38 Stat. L. 278) suits brought in a state court under section 20 of the Interstate Commerce Act, where the matter in controversy is $3,000.00 or less may not be removed to the Federal court.

and the person of the defendant corporation.[4] No objection to the service of process[5] was raised, and there was no attempt by the defendant to have it vacated or set aside as invalid upon the ground that defendant was not within the district, and for that reason not subject to service there. Jurisdiction over the cause of action and person of the defendant having thus been acquired, the court was bound to proceed even if the defendant did not appear in response to the summons, and, *a fortiori*, the ability of the court to proceed could only be questioned—as it was—under a plea to the jurisdiction predicated upon defendant's alleged statutory privilege of venue in either of the states of its incorporation, Illinois or Iowa, a privilege which, if had by the defendant, could be waived by it.[4] Again, *a fortiori*, the very fact that the privilege of venue, if had by the defendant, could by it be waived, effectively destroys any suggestion that the showing upon the face of the petition (R. 2) that neither plaintiff or defendant was incorporated under the laws of the state of Missouri, afforded, in and of itself, a basis for denying jurisdiction. If there was any disability on the part of the court to proceed, it did not spring from either want of power to entertain and determine the suit or lack of jurisdiction over the person of the defendant,[4] but only from the alleged privilege of venue asserted by the defendant after jurisdiction of its person had been ac-

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[4]General Inv. Co. v. Lake Shore & M. S. Ry. Co., 260 U. S. 261, p. 273; 43 S. C. R. 106, where the Supreme Court of the United States reviewed at length the many authorities sustaining such jurisdiction and distinguished it from the privilege of venue given to defendants under the first and second clauses of section 51 of the Judicial Code.

[5]Through inadvertance the Transcript of Record fails to show service, which, however, is shown by the record in the Marshall's return, to have been made upon the defendant Chicago, Rock Island & Pacific Railway Company, by delivering a true and correct copy of the summons together with a copy of the petition, to H. B. LaTourette, in charge of defendant's business office, and acting as its authorized agent, in St. Louis, Mo., August 28th A. D. 1925. Doubtless the defendant will admit this service, but if it is questioned a certificate may be procured from the court below.

quired. Hence this case is to be distinguished from the group of cases where it is shown that the service of process was invalid *per se*, because the defendant was not present in the district where service was attempted to be made.[6]

THE ISSUE—TITLE IV.

Upon the premises of Title III hereof it is clear that while the issue to be decided is the alleged statutory privilege of venue, it nevertheless is, *ipso facto*, jurisdictional as related to the court in which the action was brought. Incidentally, while the dismissal below was "without prejudice", it will, if sustained, kill plaintiff's right and bar its remedy, since the action could not be brought *de novo* within the two-year limitation period fixed in the transportation contracts (Uniform Bills of Lading). *Lehigh Ellis & Co. v. Payne*, 274 Fed. 443.

Whether the dismissal below should be sustained or denied, in the light of this court's decisions, depends largely upon the status of the defendant corporation within the state of Missouri, as presently will be shown, which leads to an examination of the evidence of record and matters of which the court will take judicial notice.

STATUS OF DEFENDANT CORPORATION IN MISSOURI —TITLE V.

The defendant, although incorporated under the laws of the states of Illinois and Iowa, nevertheless, is engaged within the state of Missouri and elsewhere as a common carrier for hire in the transportation of persons and property (R. 10, 11). It owns and operates within the state of Missouri a main line

[6]Philadelphia & Reading v. McKibbon, 243 U. S. 264; 37 S. C. R. 280; Robert M. Green v. Chicago, B. & Q. R. Co. 205 U. S. 530; 27 S. C. R. 595; McCormick Co. v. Walthers, 134 U. S. 41, 43; 10 S. C. R. 485; Shaw v. Quincy Mining Co., 145 U. S. 444; 12 S. C. R. 935.

of railroad extending from St. Louis to Kansas City, and transports both passengers and property over said line (R. 10, 11, 12). At a branch office, maintained in the City of St. Louis, it has a representative authorized to engage in contracts for the intra-state and inter-state transportation of persons and property (R. 10). This representative also is authorized to adjust claims for loss and damage to property which may have occurred in transit (R. 10, 12); and where such claims are not adjusted by him, he is, at times, called upon to recommend the basis of settlement (R. 11).

The material parts of Missouri laws, which permit the defendant to operate in that state as a common carrier—of which this court will take judicial notice—are shown in the margin.[7]

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[7]Missouri Revised Statutes 1919, Chapter 90, Article 2, Section 9879 provides: " * * * any railroad duly incorporated and existing under the laws of any state of the United States may extend, construct, maintain and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this state concerning railroad corporations as fully as if incorporated in this state. * * * and a corporation of another state * * * extending its railroad as aforesaid into or through this state, shall establish and maintain an office or offices in this state, at some point or points on the line of road so * * * operated, at which legal process and notice may be served as upon railroad corporations of this state." (R. S. 1909, Section 3078).

Missouri Revised Statutes, 1919, Section 9879, 9890, 9891, 9912, 9913, provide that every railroad company organized under the laws of a state other than Missouri, and operating a railroad within the state of Missouri is subject to all of the regulatory laws applicable to railroad companies operating under the laws of Missouri, such as making reports to the State Railroad and Warehouse Commission (Sec. 9890); penalties and forfeitures (Sec. 9841); obligation to receive freight and furnish cars (Sections 9913, 9915 and 9979) and that all such railroads are declared to be public highways of that state, and the companies operating them common carriers. Their charges as such must be reasonable and are subject to regulation.

Missouri Revised Statutes, 1919, Chapter 12, Article 4, Section 1180, provides that: "Suits against corporations shall be commenced * * * in case the defendant corporation is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state * * * in either of such counties, or in any county where such corporation shall have or usually keep an office or agent for the transaction of their usual and customary business." (Revised Statutes 1909, Section 1754).

The word "corporation" used in Missouri Revised Statutes, 1919, Chapter 12, Article 4, Section 1180, "comprehends foreign as well as domestic corporations," and a citizen of Illinois may sue a corporation of New York in Missouri. State ex rel v. Jones, 270 Mo. 230. And "the venue of a suit against a foreign corporation licensed to do business in this state is governed by this section" I. D. The phrase "usual and customary business" as used in this section, means the handling of passengers, receipt and delivery of freight, issuance of bills of lading, the sale of tickets, and the keeping of books of account relating to such transactions. Ex rel Hines v. Calhoon, 281 Mo. 583; 220 S. W. 6.

The defendant, Chicago, Rock Island & Pacific Railway Company, may sue and be sued in the state of Missouri.[8]

A corporation, not a resident of the state of Missouri, and neither engaged or about to engage in business in that state, is entitled to sue in the courts of Missouri on the principle of comity;[9] hence the defendant corporation may be sued in the state of Missouri by corporations of other states; and the place where the cause of action accrued seems to be immaterial.[10]

Upon the ground of diverse citizenship the defendant has removed cases from the state courts of Missouri to the Federal courts in that state.[11] Such cases were not removable to Federal courts in the district of defendant's corporate domicile.[12]

FIRST CLAUSE OF SEC. 51 OF THE JUDICIAL CODE—TITLE VI.

The first clause of section 51 of the Judicial Code with immaterial matter omitted, provides that;

> "* * * no civil suit shall be brought in any District Court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant."

and of course relates to actions of which such courts are given original jurisdiction under section 24 of the Code.

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[8]C. R. I. & P. v. Young, 96 Mo. 39; C. R. I. & P. v. George, 145 Mo. 4; C. R. I. & P. v. Lydick, 187 S. W. 891; Crawford v. C. R. I. & P., 171 Mo. 68; Gabbert v. C. R. I. & P., 171 Mo. 84.

[9]Frick Co. v. Marshall, 86 Mo. App. 463; Meddis v. Kenny, 176 Mo. 200; 75 S. W. 653.

[10]Price Brokerage Company v. C. R. I. & P., 207 Mo. App. 8, where suit was brought in the Missouri state court for loss of potatoes which had been shipped in interstate commerce from Minneapolis, Minnesota to Ottowa, Illinois, delivery having been wrongfully made without surrender of the original Bill of Lading.

[11]Gustafson v. C. R. I. & P. Ry. Co., 128 Fed. 85; C. R. I. & P. Ry. Co. v. Stepp, 151 Fed. 908; 164 Fed. 785.

[12]Lee v. C. & O. Ry. Co., 260 U. S. 653; 43 S. C. R. 230.

This privilege of venue clearly is dependent upon but a single consideration, which is the place of inhabitance of the defendant. Hence, it is not dependent upon either the place of residence, citizenship or corporate abode of the plaintiff, or where the cause of action accrued. This is made so by the very language of the rule. For example if a cause of action accrued in California on the railroad of the Southern Pacific Co. through damage to property, there in the course of its interstate transportation, the plaintiff, a citizen and resident of the state of Texas, in bringing suit under the Federal law "regulating commerce" (Section 20, Inter-state Commerce Act) could commence its action in a Federal Court in the state of Kentucky, where the Southern Pacific Company has its corporate abode.[13] In such a situation the place where the cause of action accrued and the citizenship of the plaintiff, would be immaterial. It is nevertheless true that venue in Kentucky, under such circumstances, could be avoided by commencing the suit in the state court of California where the cause of action accrued and where the Kentucky corporation was engaged in business because the original jurisdiction of the Federal Court is concurrently vested in the State Courts. But if the amount in controversy exceeded $3,000.00, the Kentucky corporation defendant, by refusing to waive its privilege of venue, could compel removal of the suit to the Federal court in California under the removal provisions of Section 28 of the Judicial Code, because the right of action was based upon a law of the United States; in that event a showing of diverse citizenship would be immaterial since it would not, under such circumstances, be the "only" cause for removal within the meaning of the 2nd clause

[13]Although the rail transportation system of the Southern Pacific Company is in the western section of the United States, none of it being in Kentucky, its corporate home is in the state of Kentucky. United States v. Southern Pacific Co., 259 U. S. 214, 228, 229; 42 S. C. R. 496.

of the Section 51 of the Judicial Code.[14] Whether, after removal, the Kentucky defendant corporation could then plead to the jurisdiction and, under the privilege of venue given in the 1st clause of Section 51, compel removal to a Federal court in Kentucky, within the district of its corporate abode, is a question. If it could not compel such removal then it is clear that the venue rule of the 1st clause of Section 51 is open to defeat at the hands of the plaintiff, merely by going first into the state court of California, where it could not remain against the will of the defendant, but which would nevertheless be effective in causing the Kentucky corporation defendant to submit to suit—in a cause of action arising under a Federal law, of which the District Courts of the United States are given original jurisdiction—in a Federal court outside of the state and district of its corporate abode. And this could be done notwithstanding the very definite rule laid down in the group of cases which saves to defendants the privilege of venue in the district of their corporate domiciles,[15] important among which is *Macon Grocery Co. v. Atlantic C. L. R. Co.*, 215 U. S. 501; 30 S. C. R. 184-187, decided January 17, 1910, where the following conclusions were reached:

> "And it is established by the decisions of this court that, within the meaning of this act (Judiciary Act of 1875, as amended, but not changed in any material particular by Section 51 of the Judicial Code) a corporation cannot be considered a citizen, an inhabitant, or a resident of a state

[14]Gen. Inv. Co. v. Lake Shore & M. S. Ry. Co., 260 U. S. 261, 279; 43 S. C. R. 106; Lee v. Chesapeake & O. Ry. Co., 260 U. S. 653; 43 S. C. R. 230 and cases there cited.

See also Illinois Cent. R. Co. v. Segari, 205 Fed. 998; Benedict v. New York, 247 Fed. 758, 760; City of Memphis v. Board of Directors, 228 Fed. 802, 803, 804; Whittaker v. Illinois Central, 176 Fed. 130; W. H. Goff v. Lanborn & Co., 281 Fed. 613, 616; 260 U. S. 734, certiorari denied, all sustaining the doctrine that the term "only" used in the last clause of section 51 of the Judicial Code, eliminates diversship citizenship as a consideration affecting the venue when there is present with it some other controlling considering such as an action based upon a Federal law, etc.

[15]McCormick v. Walthers, 134 U. S. 41; 10 S. C. R. 485; Shaw v. Quincy Mining Co., 145 U. S. 445; 12 S. C. R. 935; Southern Pac. Co. v. Denton, 146 U. S. 202, 13 S. C. R. 44; Galveston, etc., R. R. Co. v. Gonzagles, 151 U. S. 496; 14 S. C. R. 401.

> in which it has not been incorporated; and consequently that a corporation incorporated in a state of the Union cannot be compelled to answer to a civil suit, at law or in equity, in a circuit court of the United States, held in another state, even if the corporation has a place of business in that state."

Also it is to be observed that in such situations where the defendant is unwilling to waive its privilege of venue, the plaintiff's privilege of concurrent jurisdiction in the state court is lost, or rather may be defeated by defendants under the removal provisions of Section 28 of the Judicial Code. A further and important observation, in the hypothetical illustration here given, is that a Federal court in California would have jurisdiction over the cause of action brought by the Texas plaintiff, if suit was commenced in that court, and, after service of process upon the defendant—there present and engaged in business—would not be under any disability to proceed unless and until the Kentucky corporation defendant asserted its privilege of venue by refusing to submit to jurisdiction excepting in a Federal court of its domicile.[14]

A CONCRETE ILLUSTRATION—TITLE VII.

Tht hypothetical illustration given under Title VI hereof is intended to demonstrate that the venue provision of the 1st clause of section 51 of the Judicial Code—where the defendant is in a position to insist upon it—takes the plaintiff away from the state in which it is a citizen, and also disregards, as immaterial, the place where the cause of action accrues. The point for emphasis is that these two considerations disappear

altogether, and are of no effect, independently of the fact that defendant's entire railroad operation is foreign to the state of its incorporation, when the defendant is in a position to refuse to submit to the jurisdiction of a court located outside the dominion of its corporate domicile. A concrete illustration is found in *St. Louis S. W. R. Co. v. Alexander*, 227 U. S. 218; 33 S. C. R. 245, decided February 3, 1913. In that proceeding the plaintiff in error (defendant below) was a corporation organized and existing under the laws of the state of Texas. The suit was originally brought in the New York state court by Alexander for alleged damage to poultry during the course of its interstate transportation by defendants from Waco, Texas, to New York, N. Y. The right of action there, as here, was based upon a Federal law "regulating commerce" (Section 20 of the Interstate Commerce Act). Hence, upon that ground, the case was removable[16] by defendant to the District Court of the United States in New York; but, ignoring that ground, removal to the Federal court was had upon the ground of diverse citizenship. Since the showing of diverse citizenship was not the "only" ground for Federal jurisdiction, it is presumed that this consideration was ignored as immaterial in accordance with the group of cases cited at page 9 of this brief under marginal note (14). After removal to the Federal Court in New York had been accomplished, however, the defendant (St. L. S. W. Ry. of Tex. plaintiff in error) raised objection to service upon it, as a Texas corporation, in the state of New York. In other words, after removing the case from the state court defendant attempted to invoke the privilege of venue given it by the 1st clause of section 51 of the Judicial Code under the claim that it could not be brought within the jurisdiction of the Federal Court excepting in the

[16]Independently of the amount, because removal at that time in such cases was not restricted to controversies of more than $3,000.00.

place of its incorporation, which was Texas. The venue thus asserted was of course independent of the place where the cause of action accrued, or the place of residence of the plaintiff. For all that mattered the action might have accrued in the state of California, and the plaintiff might have been a resident of Colorado, or Missouri, since, under the plea of the defendant to vacate the service, the Court had before it:

(a) an action arising under the laws of the United States, of which the District Courts of the United States, (then circuit courts) had original jurisdiction;

(b) which was removable from the state to the Federal court—in the state in which the suit was commenced, within the meaning of section 28 of the Judicial Code, —not because of diverse citizenship, but because the right of action was based upon a law of the United States;

(c) and in which jurisdiction of the defendant had been acquired, in the state court, through the process of service under the laws of the state of New York, this being possible, apparently, because the defendant Texas corporation was there—engaged in business— to the extent necessary to justify such service, even though the defendant Texas corporation did not pretend to transact its business in that state as a common carrier for hire, did not operate its railroad there, and was there represented only by a general agent.

Preliminary to its decision the Supreme Court of the United States said:

> "We reach the conclusion that this case is to be decided upon the principles which have heretofore prevailed in determining whether a foreign corporation is doing business within the district in such sense as to subject it to suit therein. This court has decided each case of this character upon the facts brought before it, and has laid down no all-embracing rule by which it may be determined

what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served, and in which it is bound to appear when a proper agent has been served with process. Lafayette Ins. Co. v. French, 18 How. 407, 15 L. ed. 452; Green v. Chicago, B. & Q. R. Co. 205 U. S. 532, 51 L. ed. 917, 27 Sup. Ct. Rep. 595. Applying the general principles which we regard as settled by this court, Was this company doing business in the state of New York in that sense?

Then, after stating the controlling facts, showing that the defendant maintained in New York city a general eastern freight agency, through which negotiations toward settlement of plaintiff's claim were had, the conclusion was reached that:

"Here, then, was an authorized agent attending to this and presumably other matters of kindred character, undertaking to act for and represent the company, negotiating for it, and in its behalf declining to adjust the claim made against it. In this situation we think this was the transaction of business in behalf of the company by its authorized agent in such a manner as to bring it within the district of New York, in which it was sued, and make it subject of process there." "* * * In our opinion the court did not err in holding the corporation subject to process and duly served in this case. Judgment affirmed."

The sense of this holding seems to be that since the defendant corporation was lawfully brought within the jurisdiction of the New York state court by virtue of good service of process under the laws of that state—being there present and engaged in business to the extent that such service was lawfully made—it could not render that service invalid, and thus escape the

jurisdiction of its person by the United States District Court in New York, under a plea that its corporate abode was in Texas, and that therefore, under the 1st clause of section 51 of the Judicial Code it could not be compelled, against its will, to submit to the jurisdiction of any court not within the dominion of its corporate domicile. The opinion of the court, however, makes special mention of two facts which distinguish —although the distinction seems immaterial as a ground for the decision—that case from the one here in issue, viz:

(a) That the plaintiff was a citizen of the state of New York, and,

(b) That the cause of action accrued in the state of New York, since the property alleged to have been damaged was deliverable there.

Although these might be considerations requisite to give the state court of New York concurrent jurisdiction over the cause of action and the person of the defendant, they were not, nevertheless, for reasons already shown, considerations which could possibly interfere with the defendant's statutory privilege of venue in the court of its corporate domicile, if, under such circumstances, such privilege was actually granted by the statute. That is to say, the venue provisions of the 1st clause of section 51 of the Judicial Code—(the second clause of that section being ineffective and immaterial because the ground for jurisdiction in the Federal Courts was not "only" diverse citizenship)— by its very terms eliminates those considerations, since the corporate abode of the defendant must be reached by the plaintiff going to it, even if the cause of action arose in New Mexico, the plaintiff resided in Colorado, and the corporate home of the defendant was in Minnesota. Therefore it appears that the conclusions of the court in the cited case must have rested upon other considerations. Was it because the defend-

ant, having been brought within the jurisdiction of the state court by lawful process under the laws of the state of New York, could not escape jurisdiction over its person, once it had attached, by removal to the Federal court in that state, because it was found doing business there? Or was it because the plaintiff, rather than the defendant, under its privilege of concurrent jurisdiction, could, in such actions—and did—control the venue through its choice of forums as between Federal and State in commencing its action in the state court? If either or both of these questions are to be answered in the affirmative, it then becomes clear that in an around about manner, by moving from court to court, these peculiar results are reached, viz:

(a) FIRST—the plaintiff's privilege of concurrent jurisdiction is exercised in choosing the state court as the forum in which to bring his action, arising under a law of the United States, of which the District Court of the United States is given original jurisdiction;

(b) SECOND—this privilege of concurrent jurisdiction, which the plaintiff has exercised as an original matter, is at once taken away by the defendant under the latter's right to removal from the state to the Federal court in the district where the suit was commenced;

(c) THIRD—but the reward of the plaintiff for being compelled to yield its privilege of choosing the forum, is to take from the defendant its statutory privilege of venue within the district of its corporate domicile.

Two pre-requisites are essential to support the jurisdiction of a particular judicial tribunal, these being lawful service and venue; and the failure of either is fatal to the jurisdiction

of a particular court. Neither of these were lacking in the Alexander case, where the final venue was in a Federal court of original jurisdiction over the cause of action—but outside the dominion of the defendant's corporate domicile—because the defendant was lawfully served in such outside district. Suppose Alexander had commenced his action in the Federal District Court of New York, where it finally was brought from the state court. Could the Texas corporation, in that event, be served with process issuing directly from the Federal court? In other words, can it be said that if the defendant was there in New York, subject to service of process from a state court, in an action arising under a law of the United States, over which the state court had concurrent jurisdiction, it nevertheless was not there for the purpose of service issuing directly out of the Federal court which had original jurisdiction, and which, through indirect procedure on the part of the plaintiff, finally assumed jurisdiction of the defendant? Expressed in another way, is the Federal court—outside the defendant's corporate domicile—under a disability to acquire jurisdiction over the person of the defendant, in a cause of action over which it has original jurisdiction, by the service of process issuing directly from that court to a defendant in that district engaged in business and subject to suit and process under the state laws? Or, in such situations, is jurisdiction over the person of the defendant by a Federal court to be acquired only by removal from a state court where the service of process was made? These questions suggest the fiction that the presence or absence of a corporation defendant in the district where suit is brought, is made wholly dependent upon the forum from which the process of service issues. That is to say, if the Federal court, having original jurisdiction of the cause of action, in a district where a defendant was engaged

in business, undertook to make personal service, such service could not be made upon the theory that the corporate defendant was not there in person, because its corporate domicile was in another state; while, on the other hand, if in the same district, in the same cause of action, process was issued from a state court the service could be made on the theory that the defendant corporation was there in person, even though its corporate domicile was in another state. Thus it appears that this intangible and invisible thing, existing only in contemplation of law, may be made to appear or disappear, phantom-like, in and out of the state wholly by means of the method of procedure employed in trying to reach it. It hardly seems possible that our laws relating to venue, which are essential to support jurisdiction, should be construed so as to be susceptible to such fiction.

THE CASE AT BAR—TITLE VIII.

In the case at bar the defendant, Chicago, Rock Island & Pacific Railway Company, unquestionably, is present in the state of Missouri to the extent of subjecting itself to suit there, and service of process, under the state laws. Also it is subject to the service of the process there, issuing from the state court in an action arising under a United States law which would be removable to the Federal Court in the eastern district of Missouri. This being true, the real question for determination is whether this defendant, with its corporate domicile in both the states of Illinois and Iowa, is subject to process in Missouri issuing directly from the Federal Court in the district where the defendant maintains its offices and transacts its business. Admittedly, the District Court of the United States for the eastern district of Missouri had original jurisdiction over the cause of action which was based upon a United States

law, and, having such jurisdiction, it was bound to proceed with service upon the defendant, if the defendant was there. Such service was made, and upon its return by the Marshal, the Federal Court was under no disability to proceed. It was only after jurisdiction over its person had thus been obtained that the corporate defendant interposed an objection to submitting to such jurisdiction upon the ground that its corporate domicile was not within the eastern district of Missouri. Thus it will be observed, that the position of the defendant in this case, having been brought into court through the service of process, was no different, as a practical matter, than that of the defendant, *St. Louis Southwestern Ry. Co. of Texas*, in the *Alexander Case*, *supra*, since in both cases the defendants stood at the threshold of the Federal Court—outside the district of their corporate domiciles—after they had been brought there by the service of process, which in one case issued directly from the Federal Court and in the other case from a state court. Each defendant in approaching the bar of the Federal Court—outside of its corporate domicile—maintained that it was not compelled to submit to the jurisdiction of that court because its corporate domicile was elsewhere. In the case at bar no question was raised as to the validity of the service, and no motion was made to have it set aside as invalid; while in the *Alexander Case*, *supra*, the service was attacked as invalid. In both cases, however, the object sought was to obtain the benefit of the alleged privilege of venue, fixed by the 1st clause of Section 51 of the Judicial Code, which the defendants seemed to think they had in actions of this kind. If the plaintiff here had commenced its action in the state court of Missouri—which it might have done, since the foreign corporation defendant was there subject to suit and service under the state laws in an action arising under a law of the United States over which

the state court had concurrent jurisdiction—the defendant, as was done in the *Alexander Case, supra*, could have compelled removal to the district court of the United States for the eastern district of Missouri, where the case is now pending, and where it was originally brought. If that had been done it seems clear, under the decision in the *Alexander Case, supra,* that the defendant could not escape the jurisdiction of the Federal Court in which the action is now pending, upon the ground that its corporate domicile was not in that district. *Quare*, is the plaintiff—merely because it took a short-cut and did not first go through the front door of the state court, which had concurrent jurisdiction, and there subject itself to removal through the back door, at the hands of the defendant, into the very court of original jurisdiction where it first went—now to suffer dismissal of its suit. There seems to be no reason for such a rule either in law or logic. Certainly such a round about mode of procedure is not helpful from the standpoint of expediency, and clearly it does not have the effect of restricting the jurisdiction of the Federal Courts as suggested in the group of cases which give construction to Section 51 of the Judicial Code as amended.

CAN A CORPORATION FOR THE PURPOSE OF FEDERAL JURISDICTION, EXIST ELSEWHERE THAN IN ITS CORPOARTE DOMICILE?—TITLE IX.

The answer to the question presented in this title was made negatively, and without qualification, in *Macon Grocery Co. v. Atlantic C. L. R. Co.* 215 U. S. 501; 30 S. C. R. 184-187. This rule, as herein shown, is nevertheless subject to defeat and therefore is not positive. But this is not all. It seems that there are circumstances where a corporation of one state

may become, as well, a corporation of another state. In fact, the defendant here admits that it is a corporation of two states, namely, Illinois and Iowa. Whether it is the same corporation in each state, or a distinctly separate corporation in each, presents a curious question. Its corporate identity in each is the same. By the process of domestication and adoption in still another state, it would become a corporation of such other state to the same extent as if it had been there incorporated. This doctrine, which appears not since to have been overruled, is found in *St. Louis & S. F. Ry. Co. v. James*, 161 U. S. 545; 16 Sup. Ct. Reporter 621, decided March 21, 1896. This court in its opinion in that case stated:

> "To make such company a corporation of another state, the language must imply creation *or adoption* in such form as to confer the power usually exercised over corporations by the state or by the legislature, and such allegiance as a state corporation owes to its creator. The mere grant of powers and privileges to it as an existing corporation (foreign), without more, does not do this, and does not make it a citizen of the state conferring such powers."

In that proceeding the plaintiff, a citizen of Missouri, brought suit against the defendant railroad company, a corporation of Missouri, in the United States Circuit Court of Arkansas, which forum appears to have been chosen by the plaintiff upon the ground of diverse citizenship, such citizenship having been asserted because the defendant—apart from being a corporation of Missouri—also was a corporation of Arkansas, where, it had been domesticated and adopted in that state to the same extent as if it was there incorporated under laws substantially the same as the laws of the state of Missouri. This court did not hold that the defendant there, St. Louis & San Francisco Ry. Co., had not been domesticated

and adopted as a foreign corporation in the state of Arkansas to the same extent as if it had been there incorporated, but in that particular said:

> "The presumption that a corporation is composed of citizens of the state which created it *accompanies such corporation when it does business in another state* and it may sue or be sued *in the Federal Courts in such other* states as a citizen of its original creation." (Italics for emphasis.)

Whether, however, the defendant St. Louis & San Francisco Railway Company had become a corporation of Arkansas to the extent of submitting itself to suit there commenced in the Federal Court of that district, was not a consideration essential to a determination of the issue there raised. All that this court decided in that proceeding was that since the defendant was incorporated under the laws of the State of Missouri, and the plaintiff was a resident of that same state, there was no diversity of citizenship which would justify jurisdiction of the Federal Court of Arkansas upon that ground. In reaching that conclusion the Court said:

> "We are now asked to extend the doctrine of indisputable citizenship so that, if a corporation of one state, indisputably taken, for the purpose of federal jurisdiction, to be composed of citizens of such state, is authorized by the law of another state to do business therein and to be endowed, for local purposes, with the powers and privileges of a domestic corporation, such adopted corporation shall be deemed to be composed of citizens of the second state in such a sense as to confer jurisdiction on the Federal courts at the suit of *a citizen of the state of its original creation.*" (Italics for emphasis.)

The sense of this conclusion seems not to be that the defendant corporation could not be sued in a Federal Court within the state of Arkansas because its corporate domicile was in

Missouri. Its sense is only that a citizen of Missouri could not bring a suit in the Federal Court of Arkansas in a cause of action local to the state of Missouri because, the defendant being also a citizen of Missouri, diversity of citizenship did not exist.[17] Nevertheless, in a later case, decided by this court May 15, 1899, *Louisville N. A. & C. Ry. Co. v. Louisville Trust Company*, 174 U. S. 552; 19 S. C. R. 817, occasion was found to cite as an authority the case of *St. Louis S. F. Ry. Co. v. James, supra*, and it was there said of that case:

> "Yet it was held that it was not thereby made a corporation of Arkansas, in the sense of the provisions of the Constitution and of the Acts of Congress conferring jurisdiction on the courts of the United States by reason of diverse citizenship."
>
> "The statutes of Arkansas in that case went quite as far, to say the least, towards constituting a corporation of another state a corporation of the state enacting those statutes, as the statutes of Kenutcky did in the case at bar."

In this citation it appears that the full sense of the courts holding in *St. Louis & S. F. Ry. Co. v. James, supra*, was inadvertently omitted or overlooked, because there was no decision in that case that the St. Louis & S. F. Ry. Co., had not through the process of domestication and adoption under Arkansas state laws become a corporation of that state to the same extent as if it had been there incorporated. The decision, as before stated, only went so far as holding that the defendant St. Louis & S. F. Ry. Co. could not be regarded as a corporation of the state of Arkansas for the purposes of suit in the Federal Court by a citizen of Missouri—where the defendant was incorporated—on the ground of diverse citizenship.

[17] For the same reasons diversity of citizenship would fail as the only ground of Federal jurisdiction in Illinois where the plaintiff was a citizen of Iowa and the defendant, as here, a citizen of both Iowa and Illinois.

The case of *Louisville N. A. & C. Ry. Co. v. Louisville Trust Company, supra*, has since frequently been cited, along with *Macon Grocery Company v. Atlantic C. L. R. Co., supra*, and other cases in that group as authority for the proposition that a defendant corporation cannot be made to submit to the jurisdiction of a Federal Court, where suit is commenced in that court, in any other district than that of its corporate domicile and seems to carry this theory so far as to suggest that a corporation cannot, by the process of domestication and adoption in another state, become a corporation of such other state to the same extent as if it was there incorporated, for the purposes of Federal jurisdiction.

The defendant here, Chicago, Rock Island & Pacific Railway Company, admits that, apart from being a corporation of the states of Illinois and Iowa, it is engaged in business in the state of Missouri and subject there to the laws of that state to the same extent as if it was incorporated in that state. In fact, for all purposes domestic within the state of Missouri it is as fully a corporation of that state as if it was there incorporated; and, as already shown, it could not escape the jurisdiction of the Federal Court in the state of Missouri under the process of removal from a state court of an action arising under a Federal law, where the matter in controversy exceeded $3,000.00, over which the state court had acquired concurrent jurisdiction.

Another case indirectly bearing upon the jurisdictional issue here presented is the recent one of *State of Missouri ex rel. The St. Louis, Brownsville & Mexico Ry. Co. v. Wilson A. Taylor, Judge of the Circuit Court of the City of St. Louis*, No. 89, October term, 1924, decided November 17, 1924. There a Delaware corporation—adopted and domesticated in the state of Missouri, through submitting to the laws of that state in the

same particular and to the same extent as did the Chicago, Rock Island & Pacific Ry. Co., defendant here,—commenced suit in the state court against the St. Louis Brownsville & Mexico Ry. Co., a corporation of the state of Texas, in an action based upon a Federal law, for damages to property during the course of its inter-state transportation from points in Texas to points in other states. The foreign defendant corporation had no railroad in Missouri, did not maintain an office or agent there, and was not even engaged in business there. It was not domesticated in the state of Missouri and had no agent in that state upon whom service of process could be made. Moreover, of the three shipments included in that suit, only one was deliverable in the state of Missouri. Nevertheless, since the state court had concurrent jurisdiction over this cause of action—which was based upon a law of the United States, and over which the Federal Courts had original jurisdiction—the plaintiff Delaware corporation (admitted to Missouri as a foreign corporation and adopted there to the same extent as if it had been there incorporated) was permitted under the state laws of Missouri to attach the personal property of the defendant Texas corporation in garnishment proceedings. The defendant Texas corporation, in suing out a writ of prohibition against the Judge of the State court, asserted its privilege of venue in only the Federal Court of its corporate domicile within the meaning of the 1st clause of Section 51 of the Judicial Code. But this court dismissed the writ on the ground that the state court had concurrent jurisdiction. The matter in controversy there was less than $3,000.00, hence removal from the state court of Missouri to the Federal Court in that district could not be had. There was, however, a showing of diverse citizenship and the removal to the Federal Court in Missouri might have been had upon that ground; but whether,

if after such removal, the Texas corporation defendant could then have insisted upon its privilege of venue in the Federal Court of its corporate domicile, is a question. That decision, and others herein cited, shows that the privilege of venue given under the 1st clause of Section 51 of the Judicial Code is something that is subject to defeat according to the mode of process followed and the particular forum chosen. The forum, of course, is an essential part of the venue and since concurrent jurisdiction vests in the Federal and state courts in actions arising under a Federal law, the choice of forum in the first instance rests with the plaintiff, subject, however, to being taken away by the defendant and with the ultimate result, where the suit is commenced in the state court, of defeating the privilege of venue said to be given the defendant under the 1st clause of Section 51 of the Judicial Code. Under this statutory construction it seems then, that according to the mode of procedure followed, the left hand may take away what the right hand has given. In deciding *State of Missouri, ex rel. The St. Louis Brownsville & Mexico Ry. Co. v. Wilson A. Taylor, Judge of the Circuit Court of the City of St. Louis, supra*, this court found occasion to point out "that the origin of the right does not affect the manner of administering the remedy"; and that "no pecularities of state procedure will be permitted to enlarge or abridge a substantive federal right." Under the same rule of reasoning it might well be added that no pecularities of federal procedure should be permitted to enlarge or abridge a substantive federal right, which in the case at bar is the right of the plaintiff to maintain an action arising under a federal law within the Federal Court of original jurisdiction in the eastern district of Missouri where the defendant corporation is present, engaged in business, and as much a corporation of Missouri as if it was incorporated there. To enforce

this right the plaintiff should not be required, merely as a mode of procedure, to first commence its action in a state court of Missouri so that it might afterward have a proper jurisdictional standing, so complete as to bring the defendant within the jurisdiction, in the Federal Court of that district. Conversely, if the statutory privilege of venue given the defendant under the 1st clause of section 51 of the Judicial Code is to be construed as meaning that a corporation cannot be an inhabitant of any other state than that in which it was incorporated, for the purpose of Federal jurisdiction—and this being a statutory right it must be regarded as a "substantive federal right"—then it seems that it should not be laid open to defeat through any peculiarities of either state or Federal procedure. That it is open to defeat by a method of procedure is clearly shown in the cases already discussed.

ARGUMENT.

In the preceding titles, one to nine inclusive, sufficient has been said to make further argument unnecessary. It seems enough to add that the holding of the lower court in sustaining the plea to the jurisdiction should be reversed, and the case remanded with instructions to proceed to trial upon the merits.

In conclusion perhaps it is well to emphasize that there is no confusion of thought here as to the distinction between cases arising under a United States law which are commenced in a state court of concurrent jurisdiction and those of a similar nature that are commenced in a Federal court; nor is there any confusion as between suits arising under state laws which may be commenced in state courts and removed to the Federal courts upon the ground of diverse citizenship. Furthermore, there is no confusion of thought as to the distinction between jurisdiction and venue, so frequently illustrated by this court.

Respectfully submitted,

ALFRED G. HAGERTY,
Attorney for Plaintiff in Error.

Office Supreme Court, U. S.
FILED
JAN 6 1926
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

SEABOARD RICE MILLING COMPANY,
Plaintiff in Error,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Defendant in Error.

No. 311.

In Error to the District Court of the United States for the Eastern District of Missouri.

MOTION OF DEFENDANT IN ERROR TO AFFIRM.

LUTHER BURNS,
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ST. LOUIS LAW PRINTING CO., 415 North Eighth Street, Central 4477.

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MOTION OF DEFENDANT IN ERROR TO AFFIRM.

And now comes the defendant in error, Chicago, Rock Island & Pacific Railway Company, and moves the Court to affirm the judgment of the District Court for the reason that the question on which this cause depends is, as will appear from the transcript of the record filed herein, so unsubstantial as not to need further argument in this, that:

This action, one to recover damages sustained as the result of the alleged delay in the delivery of a certain shipment of goods originating with the defendant in er-

ror, was instituted in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri on August 22, 1924. It appears from the petition of plaintiff in error (Rec., p. 2) that at the time of this action the *plaintiff in error* was a corporation organized and existing under and by virtue of the laws of the State of *Texas*, and that the *defendant in error* was a corporation organized and existing under and by virtue of the laws of the States of *Illinois* and *Iowa*.

On September 9, 1924, the defendant in error filed its plea to the jurisdiction on the ground that the District Court for the Eastern Division of Missouri had no jurisdiction of said cause for the reason that neither of the parties was a resident or inhabitant of Missouri or of the district in which the action was instituted.

The plea of the defendant in error to the jurisdiction was sustained and the cause dismissed by the court below on November 18, 1924.

The question for determination on this writ of error is whether a citizen and resident of *Texas* may maintain an action against a citizen and resident of *Illinois* and *Iowa* in the Federal District Court in *Missouri* over the objection of the defendant.

Section 51 of the Judicial Code (Sec. 1033, U. S. Compiled Statutes) provides:

> "Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and except as provided in the six succeeding sections,

> *no* civil *suit* shall be brought in *any district court* against *any person* by any original process or proceeding *in any other district* than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the *action* is *between* citizens *of different states*, suit shall be brought only in the *district* of the *residence* of *either the plaintiff or the defendant.*"

It has been uniformly held by this Court in its consideration of this statute that an action of the character here involved could not be maintained, over the objection of the defendant, in a district in which neither of the parties was a resident or inhabitant. Thus, In re Keasbey & Mattison Co., 160 U. S. 221, after setting forth the provisions of this statute, it was said:

> "The last clause is added by way of proviso to the next preceding clause, which, in its present form, forbids any suit to be brought in any other district than that of which the defendant is an inhabitant; and the effect is that, in every suit between citizens of the United States, when the jurisdiction is founded upon any of the grounds mentioned in this section, other than the citizenship of the parties, it *must* be brought in the district of which the *defendant is an inhabitant;* but when the jurisdiction is founded only on the fact that the parties are *citizens of different states*, the suit shall be brought in the district of which *either party* is an inhabitant. And it is established by the decisions of this Court that, within the meaning of this act, a corporation cannot be considered a citizen, an inhabitant or a resident of a state in which it has not been incorporated; and, consequently, that a cor-

poration incorporated in a state of the Union cannot be compelled to answer to a civil suit, at law or in equity, in a Circuit Court of the United States held in another state, *even if the corporation has a usual place of business in that state* (*McCormick Co. v. Walthers*, 134 U. S. 41, 43; *Shaw v. Quincy Mining Co.*, 145 U. S. 444; *Southern Pacific Co. v. Denton*, 146 U. S. 202). Those cases, it is true, were of the class in which the jurisdiction is founded only upon the fact that the parties are citizens or corporations of different states. *But the reasoning on which they proceeded is equally applicable to the other class, mentioned in the same section, of suits arising under the Constitution, laws or treaties of the United States;* and the only difference is that, by the very terms of the statute, a suit of this class is to be brought in the district of which the defendant is an inhabitant, and cannot, without the consent of the defendant, be brought in any other district, even in one of which the plaintiff is an inhabitant.

"When the parties are citizens of different states, so that the case comes within the general grant of jurisdiction in the first part of the section, the defendant, by entering a general appearance in a suit brought against him in a district of which is is not an inhabitant, waives the right to object that it is brought in the wrong district (*Interior Construction Co. v. Gibney, ante*, 217, and cases there cited. But a corporation, by doing business or appointing a general agent in a district other than that in which it is created, does not waive its right, if seasonably availed of, to insist that the suit should have been brought in the latter district (*Shaw v. Quincy Mining Co.*, and *Southern Pacific Co. v. Denton*, above cited)."

Also to the same effect are:

St. Louis & San Francisco Ry. Co. v. McBride, 141 U. S. 127;
Shaw v. Quincy Mining Co., 145 U. S. 444, 448;
Southern Pacific Ry. Co. v. Denton, 146 U. S. 202;
Galveston etc. Railway Co. v. Gonzales, 151 U. S. 496, 513;
Macon Grocery Co. v. Atlantic Coast Line Co., 215 U. S. 508.

Respectfully submitted,

LUTHER BURNS,
M. L. BELL,
W. F. DICKINSON,
LON O. HOCKER,
FRANK H. SULLIVAN,
Counsel for Defendant in Error.

In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1925.

Seaboard Rice Milling Company, Plaintiff in Error, vs. Chicago, Rock Island & Pacific Railway Company, Defendant in Error.	No. 311.

To Alfred G. Hagerty, Counsel for Plaintiff in Error:

You are hereby notified that on Monday, January 25, 1926, on the convening of court, the defendant in error, Chicago, Rock Island & Pacific Railway Company, will present to the Supreme Court a motion to affirm the judgment of the District Court in the cause above entitled, copies of which said motion are herewith furnished you.

LUTHER BURNS,
M. L. BELL,
W. F. DICKINSON,
LON O. HOCKER,
FRANK H. SULLIVAN,
Counsel for Defendant in Error.

Service of the foregoing notice, together with copies of the motion of defendant in error to affirm, are hereby acknowledged this.....day of January, 1925.

.....

(15)

SUPREME COURT OF THE UNITED STATES.

No. 311.—October Term, 1925.

Seaboard Rice Milling Company, Plaintiff in Error, *vs.* Chicago, Rock Island & Pacific Railway Company.	In Error to the District Court of the United States for the Eastern District of Missouri.

[March 1, 1926.]

Mr. Justice Sanford delivered the opinion of the Court.

This is an action at law brought by the Milling Company against the Railway Company, in the District Court for the Eastern District of Missouri, to recover the sum of $3,035.73 for damages alleged to have been sustained through the negligence of the Railway Company, the initial carrier, and its connecting carriers, in the interstate transportation of rice shipped from Arkansas to New York. The Railway Company, appearing specially, filed a plea to the jurisdiction, on the ground that neither it nor the Milling Company was a resident or inhabitant of the district. This plea was sustained, without opinion, and the suit was dismissed for want of jurisdiction. This direct writ of error was allowed and the jurisdictional question certified, in February, 1925, under § 238 of the Judicial Code.

The Railway Company has interposed a motion to affirm the judgment, upon the ground that the question upon which the decision depends is so unsubstantial as not to need further argument. *Hodges* v. *Snyder,* 261 U. S. 600, 601. This motion must be granted.

The declaration and the testimony heard upon the plea show that the Milling Company is a corporation organized under the laws of Texas; and that the Railway Company is a corporation organized under the laws of Illinois and Iowa, having its principal

office in Chicago, but maintaining a branch office and operating a branch line within the eastern district of Missouri.

Section 51 of the Judicial Code, which deals with the venue of suits originally begun in the District Courts—re-enacting in part a similar provision in the Judiciary Act of 1888[1]—provides, subject to certain exceptions not material here, that "no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." That is to say, the suit must be brought within the district of which the defendant is an inhabitant, unless the general federal jurisdiction is founded upon diversity of citizenship alone, in which case it must be brought either in that district or in the district in which the plaintiff resides.

While this provision does not limit the general jurisdiction of the District Courts, it confers a personal privilege on the defendant, which he may assert, or may waive, at his election, if sued in some other district. *Lee* v. *Chesapeake Railway*, 260 U. S. 653, 655; and cases cited. If this privilege is seasonably asserted, the suit must be dismissed for want of jurisdiction over the person of the defendant. *Macon Grocery Co.* v. *Atlantic Coast Line*, 215 U. S. 501, 510; and cases cited.

It is immaterial whether the general federal jurisdiction in the present suit is founded upon diversity of citizenship alone, or whether the suit is also one arising under the laws of the United States, since neither the Milling Company nor the Railway Company is a resident of the Eastern District of Missouri; a corporation being, within the meaning of the jurisdictional statutes, a resident of the State in which it is incorporated, and not a resident or inhabitant of any other State, although it may be engaged in business within such other State. *Re Keasbey & Mattison Co.*, 160 U. S. 221, 229; *Macon Grocery Co.* v. *Atlantic Coast Line*, *supra*, 509; and cases cited.

[1] 25 Stat. 433, 434, c. 866.

The Milling Company contends, however, that since it might have brought the suit originally in a State court of concurrent jurisdiction within the Eastern District of Missouri, in which the Railway Company is transacting business, and the Railway Company, under the decisions in *General Investment Co.* v. *Lake Shore Railway*, 260 U. S. 261, and *Lee* v. *Chesapeake Railway, supra*, might then have removed it to the District Court, this necessarily involves the conclusion that the District Court also has "original jurisdiction" of the suit, since § 28 of the Judicial Code provides only for the removal of suits of which the District Courts "are given original jurisdiction." The fallacy of this argument lies in the failure to distinguish between the general jurisdiction of the District Courts, to which § 28 relates, and the local jurisdiction over the person of the defendant, to which § 51 relates. The same contention was made, in a converse form, in the *General Investment Company* case, in which it was argued that a suit could not be removed from a state court to a district court in which, under § 51, it could not have been brought over the defendant's objection, since it was not a suit of which the District Court was given "original jurisdiction;" and it is completely answered by the holding in that case, at p. 275, that the term "original jurisdiction" as used in § 28 refers only to the general jurisdiction conferred on the District Courts, and does not relate to the venue provision in § 51; there being "no purpose in extending to removals the personal privilege accorded to defendants by § 51, since removals are had only at the instance of defendants". This was approved and followed in *Lee* v. *Chesapeake Railway, supra*, 657.

Whether the suit be originally brought in the District Court or removed from a state court, the general federal jurisdiction is the same; and the venue or local jurisdiction of the District Court over the person of the defendant is dependent in the one case as in the other upon the voluntary action of the non-resident defendant, being acquired in an original suit by his waiver of objection to the venue, and in a removed suit by his application for the removal to the District Court.

Since the question does not require further argument, the motion of the Railway Company is granted, and the judgment of the District Court is

Affirmed.